

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-07098-ABC (SHx)	Date	June 5, 2014
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Title	<u>Perfect 10 Inc. v. Giganews, Inc., et al.,</u>
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Present: The Honorable	Stephen J. Hillman
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Sandra Butler

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: (IN CHAMBERS)

This Motion was taken under submission without oral argument,. The court has carefully reviewed all of the pleadings.

Initially at issue in this Motion is whether Plaintiff has complied with this court's March 17, 2013 Order.(Dkt. 223). The court ordered plaintiff to produce all communications with Third Parties regarding Giganews and Livewire; and a list of all businesses, entities and websites that it has accused of infringements since January 1, 2000. Defendants seek an Order that plaintiff shall conduct a reasonable and diligent inquiry to locate and produce responsive documents, including emails and other documents and communications. Defendants also seek an order for plaintiff's lead counsel to provide a declaration detailing all efforts by plaintiff and its counsel to locate documents; an issue preclusion order precluding plaintiff from contending that it has been irreparably harmed by defendants' conduct; and monetary sanctions.

Plaintiff responds that it has complied in good faith with this court's Order, including serving voluminous supplemental discovery responses.

To the extent that plaintiff still stands on Objections to RFP's 1 and 2, Objections which appear to have been raised after the Court's March 17, 2014 Order, those Objections are overruled in their entirety. To the extent that such Objections were raised prior to the March 17 Order, they are nonetheless again overruled.

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Request for Production 1, as ordered on March 17, 2014, required plaintiff to produce all communications with Third Parties regarding Giganews and Livewire regarding alleged infringements of plaintiff's works. Perfect 10 contends that it complied with the court's order by producing all such communications it could locate after a reasonable search. Plaintiff argues that it timely complied with the court's Order, producing 2,630 pages of documents, virtually all of which were email communications, following a thorough research of plaintiff's emails and its computer network, which research is set forth in detail.

Defendants' request that the court order plaintiff and its attorneys to submit sworn declarations detailing their search efforts to comply with this court's Order is Denied. F.R.Civ.P. 26(g)(1) requires attorney certification of discovery responses. The Advisory Notes to Rule 26(g) details the attorney's obligations to certify that the client has produced all information and documents available to the attorney that are responsive to the demand (or, in this case, the Court's Order). Presumably, plaintiff's attorneys are aware of the solemnity of their discovery certifications, and have proceeded accordingly, at their own jeopardy if they have signed such certifications in bad faith. Of course, counsel are also aware of their duty to supplement discovery responses as may become necessary.

Request for Production 2, as ordered by the court, required plaintiff to provide a list of all businesses, entities and websites it has accused of infringement since January 1, 2000.

Plaintiff provided with a 33 page list of 3,500 businesses, entities and websites. Although to the court's eye the responses do not appear to contain business names and entities, Plaintiff asserts that the businesses or entities which operated those websites are unknown to plaintiff, and there is nothing more that plaintiff can produce.

In sum, there is no basis for recommending an issue preclusion sanction, nor for ordering monetary sanctions.

Defendant next raises the issue of the sufficiency of plaintiff's responses to certain interrogatories and Requests for Production of Documents. The court rules as follows:

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Interrogatory 1: Plaintiffs Objections are overruled, with the exception of allegedly privileged responses. The Motion is Granted.

Interrogatory 2: The court agrees that the spreadsheet plaintiff is compiling, which includes a combination of plaintiff's DMCA Notices and its 787 Model Database spreadsheet, should be sufficient to economically respond to this Interrogatory. No further Order is made.

Interrogatories 7-8: Objections are overruled. Motion is Granted.

Interrogatory 10: Objections are overruled. Motion is Granted.

Interrogatory 11: Objections are overruled. Motion is Granted. The Interrogatory simply calls for "categories" of documents. The court does not presume one way or the other that any such document would amount to "spoliation".

Interrogatory 12: Objections are overruled. Motion is Granted as to Declarants in this Action only.

RFPs 81 and 82: Granted, however alleged privileged documents may be withheld subject to contemporaneous service of a detailed privilege log.

RFP 83: Partially granted, tot the extent that plaintiff shall produce all communications addressed directly to Giganews and/or Livewire. All other responsive documents would be privileged, and need not be logged since Mr. Cooper was in-house counsel.

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RFPs 84, 85, 86 and 87: Objections are overruled, and the Motion is Granted.

cc: District Judge Collins
Magistrate Judge Hillman
Counsel of Record*
*the term "counsel" as used herein also includes any pro se party.
See Local Rule 2.9.3.

Initials of Preparer : _____
